

LABOUR DEPARTMENT

The 19th March, 1986

No. 9/6/86-6 Lab./2616.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s General Manager, Haryana Roadways, Kaithal.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 176 of 1984.
(Old No. 359 of 1983)

SHRI KARNAIL SINGH, WORKMAN AND THE MANAGEMENT OF THE MESSRS GENERAL
MANAGER, HARYANA ROADWAYS, KAITHAL

Present—

Shri U. Kant, for the workman.
Shri A.R. Goyal, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, originally referred dispute between Shri Karnail Singh and the Messrs G.M. Haryana Roadways, Kaithal, to the Labour Court, Faridabad. The terms of the reference are as under :—

“Whether the termination of services of Shri Karnail Singh, workman, is just and correct? If not, to what relief is he entitled?”

On creation of Labour Court at Ambala in April, 1984, this reference was received by transfer.

Shri Karnail Singh alleged that he proceeded on leave and thereafter in his absence his services were terminated without holding any inquiry. This order of termination he alleged that is illegal. He has prayed for his reinstatement with continuity in service and with full back wages.

Respondent management contested the reference and contended that the workman was appointed as a Driver with effect from 10th April, 1974, on temporary basis. On 12th October, 1975, he absented himself from his duty without any prior permission or intimation. It was further contended that under rule No. 8.137 note 4, Punjab Civil Services Rules Vol. I, the Government employee who remained absent from duty beyond six months in addition to the leave due to him is to be deemed to have resigned from Government service. Accordingly, it was ordered by G.M., Haryana Roadways, Kaithal, that under the rules. The Driver was granted leave due to him that is earned leave from 12th October, 1975 to 17th November, 1975, half pay leave from 18th November, 1975 to 20th December, 1975 and leave without pay from 21st December, 1975 to 17th June, 1976 and thereafter no leave could be granted to Karnail Singh beyond 17th June, 1976 and thus he remained absent from duty beyond 17th June, 1976 and therefore, it has to be deemed that the Driver had resigned from Government service with effect from 18th June, 1976. It was also contended that Karnail Singh filed demand notice after four years of his termination which is not maintainable.

Shri Karnail Singh filed replication through which he controverted the allegations of the respondent management.

On the pleadings of the parties the following issues were framed :—

Issues:

- (1) Whether the termination order dated 23rd January, 1979, from 18th June, 1976, is justified? If not its effect? OPM
- (2) What is the fact of filing a demand notice after four years of his termination? OPM
- (3) Relief.

I have heard Shri U. Kant for workman and Shri A.R. Goyal for respondent and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

Issue No. 1.—In support of this issue management examined Mohinder Singh MW-1. He stated that Karnail Singh absented from his duty without getting his leave sanctioned. Thereafter his leave application was received which was treated as mentioned in the reply of management.

From the other side Karnail Singh appeared in the witness box, he stated that no charge-sheet was framed against him, no notice was issued to him, no enquiry was conducted against him and his services were dispensed with without issuing any notice to him and without making payment of retrenchment compensation.

In view of above evidence I am of the considered opinion that the case in hand is of a deserter workman who voluntarily deserted his services without getting his leave sanctioned. He remained absent for a long period even so and so after four years of termination. He filed demand notice so this behavior of the workman Karnail Singh clearly shows that he voluntarily abandoned his job and was not at all interested in the service so his services as per rule 8.117 note 4 Punjab Civil Services Rules Vol. I, it is clear that a Government employee who remains absent from duty beyond six months in addition to the leave due to him is to be deemed to have resigned from the Government service.

The Ld. A.R. of workman argued on the ground that if the workman has proceeded on leave and thereafter even if he remained absent more than six months then his service cannot be terminated without holding proper and fair enquiry. I think that the Ld. A.R. has mistook judicial pronouncement because in the case in hand the workman never obtained any leave from the department. In other words he absented from his duty without getting any leave sanctioned from G.M., Haryana Roadways, Kaithal. Later on the leaves which were sanctioned to him for his absentee period are neither explained by the management nor by the workman. In these circumstances an inference has to be drawn that, in fact, workman abandoned the job and due to that fact, due to operation of law, his services were terminated so termination order is just and correct, so this issue is decided in favour of management and against the workman.

Issue No. 2. The demand notice was issued after a lapse of four years which shows that it is delayed and belated one and cannot stand in the eyes of law. Hence, it has to be rejected outrightly, so this issue is decided against the workman, in favour of management.

Issue No. 3. Relief.—In view of my findings on issues mentioned above workman is not entitled to relief of reinstatement with continuity in service and back wages. I pass award regarding the dispute in hand accordingly.

Dated 8th January 1986.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala

Endst. No. 56, dated 8th January, 1986

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala

The 8th April, 1986

No. 9/6/86-6Lab./2830.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, of 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of the Mahavir Jain Charitable Hospital, Mahavir Jain Bhawan, Mahavir Jain Marg, Ambala City.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 309 of 1984

(Old No. 143 of 1982)

SHRI PARDEEP MOHAN GUPTA, WORKMAN AND THE MANAGEMENT OF THE MAHAVIR JAIN CHARITABLE HOSPITAL, MAHAVIR JAIN BHAWAN, MAHAVIR JAIN MARG, AMBALA CITY

Present -

Shri Rajeshwar Nath, for workman.

Shri D.R. Batra, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred, *vide* clause (C) of sub-section (I) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Dr. Pardeep Mohan Gupta and M/s Mahavir Jain Charitable Hospital, Ambala City, originally to Labour Court, Faridabad.

The terms of reference are as under:—

"Whether the termination of services of Dr. Pardeep Mohan was justified and in order; if not, to what relief is he entitled?"

- Labour Court at Ambala was created in April, 1984. So this reference was received by transfer.

Shri Pardeep Mohan Gupta through his notice alleged that he was employed as an incharge E.N.T. of the respondent and served the respondent for 1½ years. His services were terminated on 13th October, 1981 without any reason and without following the prescribed procedure of law. Workman alleged that this illegal order of termination be set aside and he be got reinstated with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that applicant had voluntarily left the service of management on account of his misconduct and misdeeds; there is no question of termination of services of the workman. In fact the acts of workman lowered the prestige of respondent management in the eyes of general public. When workman submitted his demand notice with the Conciliation Officer the management was ready to compromise and thereafter, compromise reached between the parties in the presence of Shri M.K. Jain, Joint Commissioner, Haryana. But workman backed out of that compromise. It was also contended that the workman was employed on part time basis as a Doctor. He was also doing his independent medical practice at Ambala Cantt. It was further contended that respondent-management Mahavir Jain Charitable Hospital is purely a Charitable Institution. It has got no motive of profit earning, so it does not fall in the definition of an industry, so the Labour Court has no jurisdiction to try this dispute nor management was bound to comply with provisions of section 25 (F) of Industrial Disputes Act, 1947. In fact the workman had been running handsome practice and he left the job of his own, so the claim of the workman be rejected.

Workman filed replication through which he controverted the allegations of the respondent-management.

On the pleadings of the parties the following issues were framed by my Ld. predecessor:—

Issues:

1. As per reference.

I have heard Shri Rajeshwar Nath for workman and Shri D.R. Batra, Legal Advisor for respondent-management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under:—

Issue No. 1 :

In support of this issue management examined Shri Gore Lal, President of respondent-management; he stated that Shri Pardeep Mohan was employed on part-time basis. He left the job of his own due to his mis-deeds and mis-conduct. He had defamed himself in the eyes of general public, so it was not possible for him to continue in the service of management. When the workman left his job he took many articles from the Hospital of approximately those articles may be of the value of one or two thousands. When workman was asked to deposit those articles in the Hospital he felt annoyed and served demand notice to the management through Labour Officer.

Workman Pardeep Mohan appeared himself in the witness box and he stated that in fact his services were terminated by the management without issuing any notice, without making payment of wages for the notice period and no retrenchment compensation was ever paid to him. He further stated that the plea of the management that he himself quit the job is basically incorrect; in fact, he was retrenched by the management.

Although there is no specific issue in this case that Labour Court has got no jurisdiction to try this dispute but it was vehemently urged by Shri D. R. Batra that respondent-management is a Charitable Institution, it has no motive of profit earning institution, is being run on the basis of receipt of donation for welfare purpose. So he submitted that this institution is not covered in the definition of an industry; however, it was refuted by the Ld. A.R. of the workman.

Without going much in detail on this controversy I would like to refer here 1978 Labour and Industrial cases page 497 Supreme Court in a case title Bangalore Water Supply V/s. A. Rajjapa it was observed that sovereign functions, strictly under stood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the Government or Statutory bodies.

In other words from the views taken and law laid down in this judicial pronouncement it was made clear that even the welfare activities run by the Government, or any charitable institutions are run by any bodies within motive of well being of the society, this staff mented in such institutions having relationship of employer and employees shall fall within the ambit of industry.

So in view of the above law the respondent-management although it is a Charitable Institution but it falls within the definition of industry.

So in view workman Pardeep Mohan was admittedly an employee of respondent-management on part-time basis and he was to be paid Rs. 1,100 P.M.

On the file except held statements of Pardeep Mohan and Shri Gore Lal, President of Mahavir Charitable Hospitals there is no other evidence on the file which can be looked into to reach at a proper and just conclusion.

Dr. Pardeep Mohan stated that he was terminated on 17th October, 1981 while Shri Gore Lal, President of Mahavir Charitable Hospital stated that Dr. workman left the job of his own. When the plea of the respondent is that the workman relinquished his job voluntarily. In those circumstances it was the duty of the workman to have established that his services were retrenched workman placed on the file. Termination letter mark-A which was put to Shri Gore Lal who refused to identify signatures of Shri Mahander Jain on this termination letter and due to that fact this termination letter could not be proved and could not be exhibited and also could not be admitted into evidence. It shows that the workman has failed to establish that his services were terminated. When the workman has to prove that his services were terminated by the management, in those circumstances the statement of Shri Gore Lal Jain goes un rebutted and has to be believed. Because the duty of the workman was that he should have summoned Shri N. K. Jain, Secretary Mahavir Charitable Hospital to prove termination letter, dated 17th October, 1981 or he should have summoned some other person in secondary evidence to identify signature of Shri Mahander Kumar Jain but no such step was taken by the workman.

If for the sake of arguments it is a greed that management terminated the services of workman, in those circumstances Shri Pardeep Mohan cannot be thrust upon the management by way of reinstatement because he brought bad name to the institution by way of mis-handling certain cases who suffered badly and that resulted in three deaths. Moreover, the departments in which workman used to work has since been enclosed as stated by Shri Gore Lal, President of the respondent-management. In the work, he can claim one month wages in lieu of notice period and retrenchment compensation as per section 25 (F) but he is not at all entitled to back wages because he used to do so his own medical practice even at that time when he was in the employment of respondent on part-time basis and after quitting the employment of respondent he is whole heartedly busy in his medical practice. He never felt any necessity even to apply for Government service as admitted by him.

Statement of Shri Gore Lal MW-1 depicts the actual possession that by the misdeeds and by mis-conduct Dr. Pardeep Mohan had exposed himself in the eyes of management as well as in the eyes of general public. So he himself quit the job and there is no question of termination of his services.

In view of my above discussions I am of the confirmed opinion that it is a case of abandonment of service and not a case of termination of his service by the management because there is no termination letter from the side of management. They alleged termination letter mark-A was not proved nor it was exhibited and admitted into evidence. So the workman neither is entitled to reinstatement nor any other relief prayed for.

In view of above conclusion I pass award regarding the dispute in hand accordingly.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Dated 20th February, 1986.

Endst. No. 535, dated 28th February, 1986.

Forwarded (Four Copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.